

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAYTON A. JACKSON,	§
	§ No. 525, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 0507020033
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 5, 2009

Decided: March 10, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 10th day of March 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Dayton A. Jackson, filed an appeal from the Superior Court's October 22, 2008 order, which adopted the Superior Court commissioner's July 2, 2008 recommendation to deny Jackson's motion for postconviction relief pursuant to Superior Court Criminal Rule 61.¹ The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on

¹ Super. Ct. Crim. R. 62; Del. Code Ann. tit. 10, § 512(b).

the face of the opening brief that the appeal is without merit.² We agree and AFFIRM.

(2) In September 2005, Jackson was indicted on five counts of Attempted Murder in the First Degree and fifteen other charges, including Burglary in the First Degree, two counts of Assault in the Second Degree, two counts of Conspiracy in the Second Degree, two counts of Endangering the Welfare of a Child, and one count of Arson in the First Degree. On September 26, 2006, Jackson pleaded guilty to two counts of Assault in the First Degree, one count of Arson in the First Degree, and one count of Conspiracy in the Second Degree. In exchange for the guilty plea, the State dismissed all of the remaining charges. Jackson was sentenced to a total of 67 years imprisonment at Level V, to be suspended after 13 years for decreasing levels of supervision. Jackson did not file a direct appeal.

(3) In this appeal from the denial of his postconviction motion, Jackson claims that his counsel provided ineffective assistance by failing to a) object to his lack of representation at every stage of the proceedings leading to his conviction; b) secure his co-defendant's statement from the prosecutor, which reflected his innocence; and c) adequately research his case before advising him to plead guilty.

² Supr. Ct. R. 25(a).

(4) Jackson's claims implicate the standards applicable to an ineffective assistance of counsel claim within the context of a voluntary guilty plea.³ In order to prevail on such a claim, a defendant must demonstrate that there is a reasonable probability that, but for his counsel's errors, he would not have pleaded guilty but would have insisted on proceeding to trial.⁴

(5) The transcript of the guilty plea colloquy reflects that Jackson confirmed he had thoroughly discussed his plea with his attorney and was satisfied with the advice he was given with respect to the plea. In the absence of clear and convincing evidence to the contrary, Jackson is bound by those representations.⁵ Moreover, Jackson has presented no evidence that, but for error on the part of his counsel, he would not have pleaded guilty and would have insisted on proceeding to trial. Jackson received a clear benefit by accepting the State's plea bargain. Finally, under Delaware law, a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea.⁶ As such, Jackson has waived his allegations of error on the part of his counsel prior to the entry of his plea.

³ The transcript of Jackson's guilty plea colloquy reflects clearly that his guilty plea was entered knowingly and voluntarily.

⁴ *Albury v. State*, 551 A.2d 53, 60 (Del. 1988).

⁵ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁶ *Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988).

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice